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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/763,797	01/23/2004	Michael J. Smollock	MK-01	7935
29880	7590	08/10/2006	EXAMINER	
FOX ROTHSCHILD LLP PRINCETON PIKE CORPORATE CENTER 997 LENOX DRIVE, BUILDING #3 LAWRENCEVILLE, NJ 08648				BOEHLER, ANNE MARIE M
ART UNIT		PAPER NUMBER		
		3611		

DATE MAILED: 08/10/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/763,797	SMOLLOCK ET AL.
	Examiner	Art Unit
	Anne Marie M. Boehler	3611

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 23 May 2006.

2a) This action is FINAL.                            2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-9 and 11-13 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) 1-7 is/are allowed.

6) Claim(s) 8,9 and 11-13 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All    b) Some \* c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) Notice of References Cited (PTO-892)  
2) Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.

4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.

5) Notice of Informal Patent Application (PTO-152)  
6) Other: \_\_\_\_\_.

1. Claims 8, 11, 12, and 13 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 11, line 4, "the pivot tube end" lacks antecedent basis in the claim (it is also noted that this recitation was not present in the earlier version of claim 8).

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

3. Claims 8, 9 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Eveleth.

Eveleth shows an axle assembly comprising an axle 14 mounted in housing 10 that also encloses a power unit. A drive hub 18 is inserted on an end of the drive axle 14 to selectively freewheel on or lock to the drive axle. A wheel 12 is fixed to the hub. A second wheel and hub are similarly mounted at the opposite side of the vehicle and, therefore, provide a freewheeling wheel.

Eveleth is silent regarding a means for locking the shaft in the housing and a sleeve for connecting the motor output shaft to the axle shaft. However, it is old and well known and would have been obvious to provide a brake (i.e. a parking brake, forming a means for locking the drive wheel power output shaft), in order to prevent the device from rolling when not in use. It would also have been obvious to provide a

sleeve connection between the motor output and drive axle shafts, in order to easily assembly the vehicle from preformed parts.

4. Claims 11 and 12 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

5. Claims 1-7 are allowed.

6. Applicant's arguments filed May 23, 2006 have been fully considered but they are not persuasive.

Applicant states that the prior art to Eveleth does not contain the combination of a "means for selectively locking the drive hub" and a "means for locking the power output shaft". The examiner has acknowledged that Eveleth lacks a means for locking the power output shaft. However, such a means for locking can simply be a brake on the wheel or axle. The examiner stated that providing brakes drive axles is old and well known and would have been obvious for preventing unintended rolling of the drive wheel. Applicant fails to provide reasoning as to why it would not have been obvious to provide a brake for the drive axle of Eveleth. Therefore, the examiner maintains that it would have been obvious to provide a brake (means for locking the drive shaft) of the Eveleth system, in order to prevent unintended rolling of the wheel.

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anne Marie M. Boehler whose telephone number is 571-272-6641. The examiner can normally be reached on 7:30-5:00, Monday-Thursday, and alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lesley Morris can be reached on 571-272-6612. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

*Anne Marie Boehler* 8/4/08  
ANNE MARIE BOEHLER  
Primary Examiner